IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

CRL.A.No. 1712 of 2005()

SC.509/2004 of II ADDL.ASSISTANT SESSIONS COURT-II, KOZHIKODE

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APPELLANT:

SANKARAN, S/O.RAMAN,
CONVICT.NO:1839, CENTRAL PRISON,
KANNUR.

BY ADV. ADV.K.K.RAJEEV(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHB AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

Crl. A. No. 1712 OF 2005

Dated this the 5th day of December, 2006.

J U D G M E N T

Appellant is the accused in S.C.No.509/2004 on the file of the Additional Assistant Sessions Court-II, Kozhikode. The appellant faced trial for an offence punishable under Section 308 of the I.P.C on the allegation that he caused a stab injury on PW2 on 27.3.2004 at Chipplithodu – Maruthilavu public road due to previous enmity. To prove the case against the appellant, the prosecution examined Pws 1 to 12 and relied on Exts.P1 to P11(b). Mos 1 to 3 were also produced by the prosecution. On the closure of the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure and he denied the commission of the offence as alleged by the prosecution. However, relying on the evidence, both oral and documentary, adduced by the prosecution, the trial court found the appellant guilty under Section 308 of the I.P.C and he was convicted thereunder and sentenced to undergo R.I for seven years. The above conviction and sentence ordered against the appellant are

assailed in this appeal.

2. Since the appellant is not having his own counsel for defending him, a counsel from the State brief panel has been appointed to argue the matter before this Court. This Court heard the learned counsel appearing for the appellant and the Public Prosecutor. The learned counsel appearing for the appellant submits that the trial court committed serious error in placing reliance on the evidence adduced by the prosecution as the evidence of the prosecution witnesses are contradictory in nature and not tallying with the medical evidence produced by the prosecution. Further the learned counsel submits that in the absence of sufficient motive for the appellant to commit the offence alleged by the prosecution, the court below should have given the benefit of doubt to the appellant. The learned counsel submits that, even if the entire evidence adduced by the prosecution is accepted, the appellant ought not have been convicted under Section 308 of the I.P.C. The ingredients of Section 308 have not been proved by the prosecution. Out of the twelve witnesses examined by the prosecution, PW2 is the injured

and Pws 6 and 8 are examined to prove the occurrence as alleged by the prosecution. PW7 is the doctor, who examined PW2 and had given Ext.P4 wound certificate and Ext.P5 discharge certificate. PW1 is the son of PW2, who had given evidence before the Court that while he was working in his work place, the police came to him and reported that his father was admitted in the hospital. Thereupon he went to the Medical College Hospital and found that his father was admitted in the casualty ward. On the next day, according to him, he had given Ext.P1 statement to PW9, the Head Constable, who recorded the same and registered a crime against the appellant under Section 324 of the I.P.C. PW2, the injured, had given evidence before the court that on the day of the incident while he was returning from Chippilithodu bazaar and when he reached the house of one Paily, the appellant suddenly jumped from the side of the road and stabbed him in his stomach with MO1. On receipt of the stab, PW2 had caught hold of the appellant and there ensued a scuffle between the appellant and PW2. Further, PW2 had stated that while he resisted, the appellant had taken a stone and hit him on his body. PW2 had further stated that

on receiving the blow, he cried allowed and Pws 6, 8 and others came to the spot and PW8 intervened and persuaded both the appellant and PW2 to departure and immediately, thereafter a jeep came and PW2 was taken to the hospital in the jeep and he was treated in the hospital. PW6 is the other witness who proved that when he came to the scene of occurrence he had seen that PW2 has received a stomach injury and blood is coming from his body. Further he had stated that he had seen the appellant retreating from the scene of the occurrence with a plastic bag. PW6 had further stated that himself and PW8, Antony Joseph, took PW2 to the hospital in a jeep and he was admitted in the hospital and examined by PW7. The evidence of PW8, who also came to the spot on hearing the cry of PW2, corroborated with the evidence of Pws 2 and 6 with regard to the incident. PW8 also had recorded that he had seen the appellant and PW2 at the spot and PW2 had received a wound and he was taken to the hospital in a jeep. PW7 is the doctor, who had examined PW2, and had given Ext.P4 wound certificate and Ext.P5 discharge certificate. PW7 had given evidence before the court that he had examined PW2 and noted the following

injuries on the body of PW2.

1. Stab wound epigastrium, perforating 3 c.m.
2. Omentum protrudging through the would in right lumbar region
3. Lacerated would forehead.

3. PW7 had further stated that PW2 was discharged on 4.4.2004 and had issued Ext.P5 discharge certificate. When PW7 was examined in the court he had testified that on 27.3.2004 at about 5 p.m he examined PW2 and PW2 was conscious at that time and he had noted the injuries on the body of PW2 which were recorded in Ext.P4 wound certificate. PW7 had further stated that a laperotomy was done on PW2 on the same day and it shows 3 c.m laceration into the anterior wall of the stomach at the antrum. He had further stated that another lacerated wound measuring about 3c.m is also noted by him in the anterior part of diapram just near the x'phistam and he had further stated that the injury numbers 3 and 4 are possibly by a weapon like MO1. But, when he was cross examined by the counsel

appearing for the defence, he had stated that these injuries are possible from a fall on the tarred portion of the road. Further PW7 had stated that stab wound means a wound caused with a sharp object and it is a clear one. However, PW7 has stated that he had not noted the detailed description of the wound. PW9, the Police Constable, had testified that he had recorded Ext.P1 F.I. Statement from PW1 and PW12 is the investigating officer, who had conducted the investigation of the case. He had given evidence before the court that MOs1 and 2 were seized by him on preparation of Ext.P3 mahazar as produced by PW3. The evidence with regard to the seizure of these material objects were also testified by PW3, who is an attester to the seizure mahazar, Ext.P3. Though the witnesses were cross examined by the counsel appearing for the defence side, none of the evidence of the witnesses has been shattered especially when PW2 was cross examined by the defence counsel. Some questions were put to PW2 while he was cross examined by the defence counsel suggesting that the appellant being a Tamilian he used to have some quarrel with some of the people of the locality and that on this reason he

implicated in the case. But, on analysing the evidence of PW2, the injured, and the occurrence witnesses, Pws 6 and 8, the lower court rightly found that the prosecution had succeeded in proving that the appellant had stabbed PW2 and caused injuries on him on the day of the incident. On an over all appreciation of the evidence, this Court is of the view that the trial court is justified in accepting the evidence of PW2 and other witnesses. Hence, the contention of the learned counsel appearing for the appellant that the trial court went wrong in placing reliance on the prosecution witnesses and there are contradictions of the prosecution witnesses are not tenable. Then the next question is with regard to the offence in which the appellant could be found guilty on the evidence adduced by the prosecution. In this context, it has to be bear in mind that the prosecution had attempted to prove the motive for the appellant to commit the alleged offence against PW2. But, it has to be noted that the motive suggested is that 4 years back while the appellant and one Udayan were quarreling each other, PW2 intervened and separated them. But, this Court is of the view that the alleged motive for the commission of the offence is not

sufficient to cause the injuries on PW2. In the absence of proof of any motive, this Court has to consider the evidence of PW7 with regard to the injuries suffered by PW2 alleged to have been caused by the appellant. The trial judge relying on the evidence of PW7 and the injuries noted in Ext.P4, wound certificate, found that the injuries caused by the appellant would come under Section 308 of the I.P.C. But, the learned trial judge missed one link with regard to the intentional action or the knowledge of the appellant while he caused injuries to PW2. Section 308 would clearly indicate that who ever commit any act with intention or knowledge to cause hurt to any person, such person can be punished under that section. As the prosecution failed to prove the motive of the appellant and the intention to inflict such injury on the body of PW2 or with the knowledge that the injury would cause such grievous hurt in the ordinary course, an offence under Section 308 I.P.C cannot be attributed to the appellant. On this ankle, the evidence of PW7is relevant which would show that if the injuries were untreated, it may cause death. The evidence given by PW7 is not sufficient to show that infliction of the injury by the appellant on the body

of PW2 is with the intention to cause such an injury on the body of PW2. The evidence in this case would show that when PW2 was returned from Chippilithodu baazar, the appellant accidentally met him on the road and he immediately inflicted a stab injury and thereafter PW2 caught hold of him and there ensued a scuffle between the two. It is also pertinent to note that PW7 has no case that any of the injuries noted by him is fatal or grievous in nature and the injuries noted are not on vital part of the body. He had only stated that if injury No.3 is not treated , it may cause death. That by itself does not mean that all the injuries noted by PW7 are intentionally caused by the appellant.

4. In the above circumstances, on accepting the entire evidence adduced by the prosecution, it will be proper for this Court to hold that the appellant be punished under Section 324 of the I.P.C. Accordingly, the conviction entered against the appellant under Section 308 is set aside and he is found guilty under Section 324. Considering the fact that the incident has taken place during 2004 and the appellant is in jail from the date of the judgment of the trial court, R.I for

two years would meet the ends of justice. Accordingly, the appellant is sentenced to undergo R.I for two years under Section 324 of I.P.C.

The appeal is allowed in part.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO. 1712 OF 2005

JUDGMENT

5th December, 2006.